

On August 26, 2009 appellant, then a 37-year-old customs and border protection officer, filed a claim for traumatic injury alleging that on August 25, 2009 he sustained an injury to his left hand. He stated that the trunk of a car landed on his left hand as he was inspecting the

undercarriage of the vehicle, resulting in an injury to his left hand. Appellant stopped work on August 25, 2009.

Appellant submitted an August 25, 2009 work status report. Dr. Robert J. Eggold, Board-certified in emergency medicine, noted the date of injury as August 25, 2009 and provided a diagnosis of a contusion. He further noted that appellant be placed off work from August 25 to 27, 2009. In a second work status report, dated August 26, 2009, Dr. Lydia M. Grypma, a Board-certified internist, noted appellant's date of injury as August 25, 2009 and advised that appellant be discharged and returned to full unrestrictive work.

On September 9, 2009 the Office advised appellant that the medical evidence submitted was insufficient to support his claim because he did not provide a physician's opinion regarding how his injury resulted in his diagnosed condition. It requested that appellant submit a detailed, narrative medical report from his physician which includes a history of injury, a firm diagnosis of any condition resulting from that injury, test results and findings and an explanation of why he believes the diagnosed condition was caused or aggravated by the claimed injury.

On September 11, 2009 the Office received a return to work worksheet completed by Barry L. Markman, a registered nurse, who stated that appellant could return to full-duty work on August 27, 2009. The Office also noted the August 25, 2009 employment incident and appellant's contusion injury.

On October 9, 2009 the Office issued a decision denying appellant's claim for traumatic injury of his left hand on the grounds of insufficient medical evidence establishing that he sustained an injury from the accepted work-related event.

On January 29, 2010 the Branch of Hearings and Review received appellant's request for review of the record.

On March 1, 2010 the Office issued a decision denying appellant's request for a review of the written record on the grounds that appellant's request was not made within 30 days of the issuance of a final decision by the Office. It issued its decision on October 9, 2009 but appellant's request for a review of the written record was postmarked January 10, 2010. The Office determined that appellant was not entitled to a review of the written record as his request was untimely. The Branch of Hearings and Review, in exercising its discretion, also decided not to grant appellant's request since his case could be equally addressed by requesting reconsideration from the Office and submitting evidence not previously considered to establish that his medical condition was causally related to the August 25, 2009 employment incident.

### **LEGAL PRECEDENT -- ISSUE 1**

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>1</sup> Second, the employee must submit

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<sup>1</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>2</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that the alleged incident occurred on August 25, 2009 as alleged: that is that the trunk of a car landed on appellant's left hand while he was inspecting a vehicle. Therefore, the issue is whether appellant established that his alleged left hand contusion resulted from the August 25, 2009 employment incident.

Appellant was seen by Dr. Eggold in an emergency room on August 25, 2009. In his work status report dated August 25, 2009, Dr. Eggold simply diagnosed "contusion. He did not record any history of injury or any findings on examination. Dr. Eggold's report is of limited probative value in establishing appellant's claim because lacking a history of injury and lacking physical examination findings, his opinion is not based upon a complete and factual background and is not sufficient to establish that appellant's hand contusion was caused by the work incident.<sup>6</sup> Similarly, Dr. Grypma in her work status report dated August 26, 2009 noted appellant's date of injury as August 26, 2009, but did not provide any examination findings, history of injury or even diagnosis. As such, her report is also of limited probative value in establishing that appellant sustained a hand contusion as a result of the accepted incident.

Appellant also submitted the September 11, 2009 worksheet completed by Mr. Markman, a registered nurse, wherein he diagnosed appellant with a left hand contusion. The Board notes, however, that 5 U.S.C. § 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As a nurse is not a

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<sup>2</sup> *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>3</sup> *I.R.*, 61 ECAB \_\_\_\_ (Docket No. 09-1229, issued February 24, 2010); *W.D.*, 61 ECAB \_\_\_\_ (Docket No. 09-658, issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *D.S.*, 61 ECAB \_\_\_\_ (Docket No. 09-860, issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> *Compare A.S.*, 59 ECAB 246 (2007).

“physician” as defined by the Act, Mr. Markman’s opinion regarding diagnosis and causal relationship is of no probative medical value.<sup>7</sup>

The Board thus finds that appellant did not meet his burden of proof to establish that he sustained a left hand contusion causally related to the accepted employment incident.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of the Federal Employees’ Compensation Act provides that “a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”<sup>9</sup> Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>10</sup> The request “must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.”<sup>11</sup> A claimant is entitled to a hearing or review of the written record as a matter of right if the request is filed within 30 days.<sup>12</sup>

While a claimant may not be entitled to a hearing or review of the written record as a matter of right if the request is untimely, the Office has the discretionary authority to grant the request and must exercise such discretion.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Office denied appellant’s traumatic injury claim in an October 9, 2009 decision. Appellant requested review of the written record by letter dated January 10, 2010 but received by the Office on January 29, 2010. As his request was not made within 30 days of the October 9, 2009 decision denying his claim, he was not entitled to a review of the record as a matter of right.

The Office exercised its discretionary authority with regard to appellant’s request. It notified him that the issue in his claim could be equally well addressed by requesting reconsideration and submitting evidence not previously considered. There is no evidence that

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<sup>7</sup> See *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>8</sup> The Board notes that the Office received medical evidence following the October 9, 2009 decision denying his claim. As this evidence was not reviewed by the Office, the Board lacks jurisdiction to review this evidence on appeal.<sup>8</sup>

<sup>9</sup> 5 U.S.C. § 8124(b)(1).

<sup>10</sup> 20 C.F.R. § 10.615.

<sup>11</sup> *Id.* at § 10.6.6 (a).

<sup>12</sup> *Leona B. Jacobs*, 55 ECAB 753 (2004).

<sup>13</sup> *Id.*

the Office abused its discretion by denying appellant's request for review of the written record under these circumstances.<sup>14</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on August 25, 2009 casually related to the accepted employment incident. The Board also finds that the Office did not abuse its discretion in denying appellant's untimely request for review of the written record.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2010 and October 9, 2009 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: February 3, 2011  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> See *G.W.*, 61 ECAB \_\_\_\_ (Docket No. 10-782, issued April 23, 2010).